

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

GALVESTON DIVISION

| | | |
|-----------------------------|---|---------------------------|
| THOMAS McBARRON, #44999-079 | § | |
| | § | |
| VS. | § | CIVIL ACTION NO. G-04-498 |
| | § | |
| UNITED STATES OF AMERICA | § | |

OPINION AND ORDER

In his response to the “Government’s Notice of Production and Motion to Dismiss” Plaintiff, Thomas McBarron, continues to complain that the Government is withholding computer files by claiming they contain possible contraband. According to McBarron, “most” of the files contain adult nudity which is not illegal and “some” of the files are simply text or application files which “cannot possibly contain contraband.” McBarron, therefore, “requests these files for legal purposes only” and argues that “the denial of producing (them) significantly prejudices his legal efforts.”

The “legal purposes” for which the files are needed by McBarron continues to be a mystery to this Court; McBarron never discloses why any specific files might help him attack his convictions. Nevertheless, this Court cannot fathom how images of a bunch of naked men and/or women prancing about could possibly benefit the “legal efforts” of an individual serving a lengthy prison term for child pornography related convictions. Nor does this Court have any desire, whatsoever, to examine McBarron’s personal smut collection to determine which images, if any, should be turned over to his father. Therefore, the Court will accept the Government’s representations that those files withheld contain “questionable” material and will **DENY** McBarron’s request for their return. Upon his release from prison, McBarron can begin a new

collection. In the meantime, this production demand seems silly, abusive and merely recreational.

As to the “some” files that are text or application files, whatever that means, the Court finds McBarron’s argument a tad more persuasive. Accordingly, it is **ORDERED** that the Government **SHALL, on or before November 14, 2005**, tender copies of these files to McBarron’s father and give Notice thereof to the Court. In the alternative, it is **ORDERED** that the Government may submit the files to this Court for in camera inspection. If the Government opts to submit the files to the Court, it is further **ORDERED** that an appropriate F.B.I. Agent be available to articulate to the Court, during its inspection, the reasons for which the Government opposes the return of the files.

The Government’s Motion to Dismiss (Instrument no. 44) will be held in **ABEYANCE** pending the resolution of this production dispute.

DONE at Galveston, Texas, this 12th day of October, 2005.



John R. Froeschner
United States Magistrate Judge